701 Pennsylvania Avenue, N.W. Washington, D.C. 20004

One Financial Center Boston, Massachusetts 02111 Telephone: 617/542-6000

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Fax: 617/542-2241

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Charles D. Ferris

Direct Dial Number 202/434-7301

September 27, 1994

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SEP 2 7 1994

Honorable Reed E. Hundt Chairman Federal Communications Commission 1919 M St., N.W. Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY

MM Docket No. 92-266 (Cable Rate Regulation) Ex Parte Presentation

Dear Mr. Chairman:

As the Commission continues to sift proposals on the "going forward" regulation of cable programming services, I thought it might be helpful to summarize the views of Cablevision Systems Corporation ("Cablevision") and its chairman, Charles F. Dolan, on these matters.

First, the Commission's policies and rules should encourage the availability of cable services on an a la carte basis. Commission's treatment of packages of unbundled programming services is critically important to Cablevision and its subscribers. For more than four years, Cablevision has been offering many of its subscribers the opportunity to select "clusters" of programming, such as news services and movie services, as an alternative to purchasing an entire service tier. More recently, Cablevision introduced its "Spectrum" service, offering subscribers the opportunity to select individual services at \$1.95 per month, or "any 4" at \$4.95 -- enabling subscribers to design customized programming packages containing only the services they want. On Long Island, more than 40% of subscribers offered Spectrum are now receiving individual channels or the do-it-yourself package. In Yonkers, New York, Cablevision's subscribers have the option of purchasing cable services on an unbundled basis or in customized discount packages, or continuing to purchase those services in traditional tiers at a regulated price. For your reference, I have attached the rate cards for the Yonkers system.

> No. of Copies rec'd_ List ABCDE

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Cablevision's decision to unbundle program services was not motivated by regulation; rather, the company began to move in this direction long before passage of the 1992 Cable Act. Its decision was prompted by the simple fact that unbundling significantly expanded consumer choice. By giving its subscribers greater freedom to design their own program packages, unbundling enables them to pay only for those services in which they are most interested.

This enhanced consumer sovereignty has yielded tangible benefits for Cablevision and its subscribers. It helped diminish churn, expand penetration, and ensure a closer fit between programming costs and subscriber demand for services. Even subscribers who did not purchase any clusters were more satisfied with the price they paid for their service, knowing they had the cluster option if they chose.

Second, Cablevision strongly opposes any limitations on the ability of operators to unbundle existing services or to offer new services on an a la carte basis. We recognize that the Commission has raised concerns in a number of cases in which operators unbundled existing services and then recombined them into unregulated packages, but a blanket prohibition of unregulated package discounts would not serve the public interest. A policy that restricts or discourages discounted packages of unbundled services will force some subscribers of a la carte services to pay higher prices or receive fewer services. To the extent such a policy leads operators to incorporate unbundled services into a cable programming service tier, subscribers of that tier would be also forced to pay higher rates for channels they did not want. Restricting or eliminating unregulated package discounts could also reinforce a "business as usual" mentality among some operators that would discourage them from undertaking the kind of infrastructure upgrades that facilitate unbundling. All of these outcomes would hurt both operators and subscribers, and undermine policy objectives articulated by Congress and the Commission.

Third, subjecting discounted packages of a la carte services to some form of rate regulation would greatly discourage unbundling and shrink consumer benefits. For instance, Cablevision's ability to offer the innovative "any 4" or "any 8" options described above depends upon the Commission's willingness to continue to permit unregulated package discounts. It would be impossible to permit subscribers to design their own package of services if each such package -- dozens or hundreds of them --

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were then treated as a regulated tier of cable programming services subject to rate regulation.

Package discounts are as old as retailing itself. In part, such discounts reflect a simple economic fact of life: per-unit service costs decline as volume increases. Therefore, the retailer shares some of the benefits of those efficiencies with the customer. The discount also may reflect a reward to the consumer for increasing the retailer's sales volume.

On the other hand, the subscriber who decides to select only one or two individual a la carte offerings raises a cable operator's average per-unit service costs. The higher price for individual offerings should reflect those higher costs, and the fact that the subscriber receives the full benefit of the operator's capital investment in the interdiction or encryption equipment and other technology necessary to unbundle individual program channels. The rate for an individual service should also reflect the value of the greater degree of specialized choice being offered by the operator. Thus, it should come as no surprise that the per-channel price of an a la carte offering varies depending upon whether it is taken on a stand alone basis or in a package.

Fourth, while the Commission has not explicitly precluded the offering of unregulated a la carte packages, the 15-point test for evaluating such offerings articulated in the Second Order on Reconsideration is too cumbersome and creates too much uncertainty to serve as a useful guide to operators. We do not propose eliminating that test. As an alternative, however, we would propose the creation of two "safe harbors" to govern the unbundling of existing services and the offering of a la carte packages. Within these safe harbors, "migration" of existing services would be permitted, and discounted packages of services would be outside the reach of rate regulation.

With respect to existing services, unbundling should be permitted at least to the extent that an operator continues to offer those services on a regulated tier as well, as Cablevision does in Yonkers. The operator should also be permitted to combine those "cloned" services into packages, which would be exempt from rate regulation, so long as the existing tier of services remains available under regulation. The continued availability of existing tiers of service, with prices "protected" by regulation, renders unnecessary any restrictions

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on the packaging or pricing of those services on an \underline{a} la \underline{carte} basis.

Discounted packages of new services offered on an <u>a la carte</u> basis should be deemed permissible <u>per se</u> and exempt from rate regulation, at least to the extent that subscribers are given a reasonable opportunity to create the packages from among <u>a la carte</u> offerings. As noted above, Cablevision offers subscribers the option of assemble customized packages (<u>i.e.</u>, "any 4," "any 8") of individually-available programming services. Cablevision's plan strikes a balance between the subscriber's desire to select his or her own package of programming and the limitations of billing software. Where packaging is done by the subscriber, subject to these parameters, there can be no argument that the availability of discounted packages undermines the <u>a la carte</u> nature of the component services.

Fifth, full realization of the benefits of a la carte offerings is being thwarted by those cable programmers who continue to insist on carriage agreements that constrain an operator's ability to unbundle their program channel. A rule preempting such agreements is essential to empower consumer choice and reduce upward pressure on cable rates by exposing more programmers to market forces. At a minimum, those agreements should be preempted where unbundled services would remain available to consumers on a regulated tier, such as Yonkers. The Commission should expressly void programming contracts to the extent they would prohibit the a la carte "cloning" of services that the consumer can continue to purchase as part of a tier.

In the absence of such a policy, programmers will continue to use their market power to force operators to assemble services in packages dictated by the programmers themselves. Subscribers, in turn, will be precluded from purchasing services except as part of packages constructed by the programmers. In negotiations between operators and programmers, programmers can and do exploit the fact that the operator has the only direct commercial relationship with subscribers. A popular programming service cannot be removed from a tier over the objections of a relatively few, well-organized subscribers, sometimes encouraged indirectly by the programmer. In Cablevision's experience, for instance, a programming service desired by fewer than 20% of all subscribers was able to generate sufficient political pressure to obtain carriage on a the most widely purchased tier. Not only does such an outcome force subscribers to subsidize services they have little interest in watching, it also undermines the Commission's

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own desire to encourage the consumer choice that unbundling makes possible. The Commission should not permit the programmers to frustrate its policies in this fashion and, in effect, to define the reach of its regulation.

Sixth, Congress clearly grasped the pro-consumer benefits of unbundling, as evidenced by its decision to exempt a la carte services from regulation. See S. Rep. No. 92, 102d Cong., 1st Sess. 77 (1991). Nothing in the statute or the legislative history suggests that Congress intended to deregulate only the individualized offering of a la carte services. To the contrary, there is evidence that Congress intended for a la carte services offered in packages to be exempt from regulation. See H.R. Rep. No. 628, 102d Cong., 2d Sess. 80 (1992). An effort by the Commission to assert jurisdiction over these packages is inconsistent with the letter and spirit of the law and, as a matter of policy, is unnecessary and counterproductive. proposal to assert such jurisdiction but to "forbear" from engaging in rate regulation would significantly dampen operators' incentives to unbundle services by raising the possibility of future rate regulation of packages of a la carte services. Without assurances that they will be able to experiment with a la <u>carte</u> offerings in an unregulated environment, many operators may be reluctant to embark on this course at all.

The Commission has broad authority to prevent "evasions" of its rate rules by operators who abuse the statutorily-granted flexibility to offer unregulated packages of a la carte services. We believe the Commission would err by adopting an across-the-board policy premised on the notion that such package discounts inherently conflict with the interests of consumers. If the Commission feels compelled to adopt some kind of uniform policy regarding package discounts, in addition to the "safe harbors" described above, it could devise a formula establishing a permissible ratio (or range of ratios) between the stand-alone and the package price of an unbundled program service.

Finally, Cablevision supports the proposal of the National Cable Television Association to revise the financial incentives for adding new services to cable programming service tiers. While Cablevision has no present plans to expand service offerings on existing tiers, the company agrees that the incentives adopted by the Commission in the Fourth Report and Order are inadequate to encourage operators who wish to do so to expand their tiered offerings.

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Thank you for the chance to discuss these issues. I remain available to discuss these issues with you at your convenience.

Sincerely,

Marles D. Ferris

cc: Honorable James H. Quello Honorable Andrew C. Barrett Honorable Rachelle B. Chong

Honorable Susan Ness

Mr. Blair Levin Ms. Meredith Jones

Ms. Kathleen M.H. Wallman

Mr. Ed Hearst

The Secretary, FCC (2 copies)

D31810.2

A Service of Cablevision

OptimumTV Channel Lineup

- 2 WCBS (2) New York
- 3 SportsChannel
- 4 WNBC (4) New York
- 5 WNYW (5) New York (Fox)
- 6 HBO
- 7 WABC (7) New York
- 8 Cable News Network [CNN]
- 9 WWOR (9) New York (Ind.)
- 10 The Discovery Channel/

Mind Extension University

- 11 WPIX (11) New York (Ind.)
- 12 News 12
- 13 WNET (13) New York (PBS)
- 14 On Cablevision
- 15 ESPN
- 16 ALE
- 17 USA Network
- 18 The Nashville Network (TNN)
- 19 Public Access
- **20 TNT**
- 21 WLJW (21) Plainview (PBS)
- 22 Nickeledeon
- 23 Lifetime
- 24 Consumer News &

Business Channel (CNBC)

- 25 Yonkers Beard of Education
- 26 The Family Change!
- 27 TBS Superstation
- 28 VH-1
- **29 MTV**
- 30 Q2
- 31 QVC
- 32 WHSE (68) Newark
- 33 C-SPAN
- 34 Madison Square Gardon Network
- 35 NewSport
- 36 American Movie Classics (AMC)
- 37 The Disney Channel
- 38 Brave

- 39 The Movie Channel
- 40 Cinemax
- 41 Showtime
- **42 Playboy Television**
- 43 Sci-Fi Channel
- 44 Consedy Central
- 45 Cartoon Network
- 46 Flix
- 47 Encore
- 48 Encore 2 Love Stories
- 49 Encore 3 Westerns
- 50 Encore 4 Mysteries
- 51 TV Food Network
- 52 The Learning Channel
- 53 Court TV
- 54 C-SPAN 2/City Hall
- 55 The Weather Channel
- **56 Headline News**
- 57 ESPN2
- 58 Country Music Television/MSG II
- 59 MuchMusic
- 60 BET
- 61 MTV Latino
- 62 Canal 66
- 63 GEMS
- 64 HBO Español
- 65 El Entertainment

Talevision

- 66 PPV Listings Channel
- 67 PPV 1
- 68 PPV 2
- 69 PPV 3
- 70 PPV 4
- 71 Action PPV
- 72 ValueVision
- 73 Archdiocesan Channel
- 74 WNYC (31) New York
- 75 WXTV (41) Paterson
- 76 WNUU (47) Lindon

Important Customer Information: The listed programs, packages and services are Cadovision's current offerings. The programs, packages, survices, number of channels, content, itemat, rates and other aspects of Cablevision's offerings are subject to change of responsive and other aspects of Cablevision's offerings are subject to change of responsive and other aspects of Cablevision's offerings are subject to change of responsive taxon throughout the program of the prog



Custom create your own cable package...

Optimum Choices	
Any One	1.95
Any Four	4.95
Any Eight	18.95
News 12 Yonkers	
Lifetime	
The Weather Channel	

The Family Charmel **NewSport** MuchMusic New!

BET New! C-SPAN*

C-SPAN 2* New! Canal 66 New!

Cornedy Central New!

The Learning Channel New!

Headline News New! MTV Latino New!

Country Music Television TV Food Network New!

E! Entertainment Television New!

Court TV New! Encore New!

Encore 2 Love Stories New!

Encore 3 Westerns New!

Encore 4 Mysteries New!

The Discovery Channel

Sci-Fi Channel New!

The Nashville Network

Cartoon Network New!

Shopping Mall:

ValueVision New!

QVC New!

Q2 New!

ESPN2 New!

CNN

ASE

TNT

Flix New!

GEMS New!

Basic	Service	9.95

All Broadcast TBS Superstation

Optimum Box 3.00 ea.

Your gateway to Pay Per View

Optimum Premiums 9.95 ea.

HBO

The Movie Channel

The Disney Channel

SportsChannel

MSG

American Movie Classics

Showtime Cinemax

Brave

HBO Español

Playboy Television

*Bonus: C-SPAN and C-SPAN 2 may be selected at no extra charge with the perchase of any Optimum service.

Note: Does not include sales tax and franchise fees.

Instantant Contomer Information: The listed programs, packages and services are Catheresion's current efforting. The programs, packages, services, number of classes, correct, format, rates and other respects of Catheris

378-8940

More Choice More Value More Freedom.



A Service of Cablevision

The Optimum Package

Optimum

The Movie Channel or **American Movie Classics**

News 12 Yonkers

The Discovery Channel

Lifetime

The Weather Channel

The Family Channel

Country Music Television

NewSport

Cartoon Network New!

Cornedy Central New!

Court TV New!

The Learning Channel New!

C-SPAN

C-SPAN 2 New!

Cable News Network (CNN)

ESPN2 New!

ARE

TNT

The Nashville Network

Sci-Fi Channel New!

BET New!

El Entertainment Television New!

Headline News New!

CNEC

ESPN

MTV

VH-1

USA Network

Nickelodeon

Shopping Mall:

ValueVision New!

QVC New!

Q2 New!

Basic Service

All Broadcast

TBS Superstation

Includes one Optimum box

\$29.95

Note: Does not include sales tax and franchise fees.

Important Continuer Information: The limit programs, backages and services are Cablevision's current offerings. The programs, packages, services, number of channels, cursos, format, rates and other aspects of Cablevision's affairings are subject to drange or discontinueron at any time in accordance with applicable low.

378-8940

Choose an Optimum package for greater value.



A Service of Cablevision

The Optimum Plus Package

Optimum Plus

HEDO

The Disney Channel

Showtime or

SportsChannel and MSG

The Movie Channel

American Movie Classics

News 12 Yonkers

The Discovery Channel

Lifetime

The Weather Channel

The Family Channel

Country Music Television

NewSport

Cartoon Network New!

Comady Central New!

Court TV New!

The Learning Channel New!

C-SPAN

C-SPAN 2 New!

Cable News Network (CNN)

ESPN2 New!

ALE

TNT

The Nashville Network

Sci-Fi Channel New!

BET New!

E! Entertainment Television New!

Headline News New!

CNBC

ESPN

MTV

VH-1

USA Network

Nickelodeon

Shopping Mail:

ValueVision New!

OVC New!

02 New!

Basic Service

All Broadcast

TBS Superstation

Includes two Optimum boxes

\$44.95

Note: Does not include sales tax and franchise fees.

Impartant Customer Information: The listed programs, juckages and services are Castomison's current efforings. The programs, packages, services, mander of chands, coraint, format, name and other separcs of Cabbusion's offerings are subject to classing as second incurred at any time in accordance with applicable law.

378-8940

Choose an Optimum package for greater value.



RCV BY:Mintz Levin Wash DC | 3-27-94 | 15:01 | The Optimum Gold Package

Service of Cablevision

Cinemax Bravo

Encore New!

Optimum Gold

Encore 2 Love Stories New!

Encore 3 Westerns New!

Encore 4 Mysteries New!

Flix New!

Television Food Network New!

HBO

The Disney Channel

Showtime

SportsChannel

MSG

The Movie Channel

American Movie Classics

News 12 Yonkers

The Discovery Channel

Lifetime

The Weather Channel

The Family Channel

Country Music Television

NewSport

Cartoon Network New!

Comedy Central New!

Court TV New!

The Learning Channel New!

C-SPAN

C-SPAN 2 New!

Cable News Network (CNN)

ESPN2 New!

ASE

TNT

The Nashville Network

Sci-Fi Channel New!

RET New!

E! Entertainment Television New!

Headline News New!

CNBC

ESPN

MIV

VH-1

USA Network

Nickelodeon

Shopping Mail:

ValueVision New!

OVC New!

Q2 New!

Basic Service

All Broadcast

TBS Superstation

Includes three Optimum boxes

PPV discounts

\$64.95

Note: Does not include sales tax and franchise fees.

Important Customer Information: the listed programs, packages and services are Cobicvision's current effecting. The programs, packages services, number of channels, curtuel, femul, rates and other appects of Cobievision's cristings are sollect to change or dimensionate at a complex to change or dimensionate at any time in accordance with replicable 8%.

Choose an Optimum package for greater value.



Keeping You Informed



Captevision wants to keep you up to date on the programming, services and rates we offer. You'll receive this information semi-annually, or when you change your level of service, or if we make certain changes in your programming. And, of course, we will provide this information whenever you request it.



When will you let me know if my service changes? If possible, we will tell you about significant programming or network changes 30 days before they occur. If this is not possible, we'll notify you within 30 days of the date we first know of these changes.

What kind of changes will I get a notice about? We'll tell you if a network or a channel is no longer available as part of your level of service, or if there is a significant change in the character of the programming service you currently receive.

What **rights do I** have if I get a notice that my service has changed? You have the right to terminate your service or select a lower level of cable service at no charge if you let us know up to 45 days after you receive our notice.

If I subscribe to a premium service tier, do I have any other rights?

Yes, if you receive a notice that your service is being changed and you advise us within 30 days that you intend to downgrade or terminate service, you will be entitled to a refund of any prepaid service charges or installation, upgrade or other similar one-time charges that you may have incurred in connection with your service during the six months prior to the change.

What if I subscribe to the entry level of service?

It depends. If, for example, within 90 days of your subscription to Cablevision's entry level of service a network or channel is removed from that service but remains on the cable system, and within 30 days of that change you advise us that you want to upgrade your service, you may be entitled to a free upgrade plus a discount on service for up to six months. If, however, the channel or network is no longer available on Cablevision's system and you tell us within 30 days that you want to either terminate your service or continuo at the same service level, you may be entitled to receive a refund on any installation, upgrade or other charges you paid within the six months prior to the change. If you remain an entry level cable subscriber, you may also receive, for a limited period of time, a partial credit on your cable bill.

How will I know what my specific rights are? We'll explain the specific criteria to you if and when a network or channel change occurs.

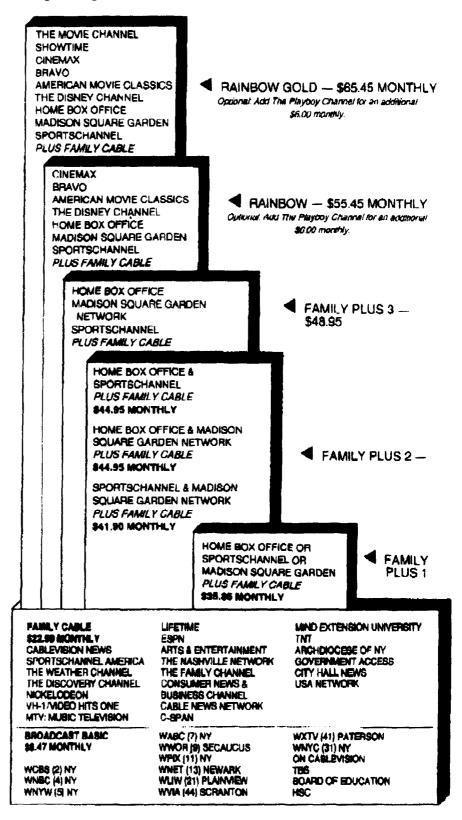
What are your current rates and services? We've included our current rates, services and channel lineup in this pamphlet. Please take a few moments to review them. If you have any questions, call us. We'll be glad to answer them.



EXISTING SYSTEM LINE-UP

CABLEVISION RATE CARD

Programming for all tastes. Packages for all budgets.



Cablevision Channel Directory

- 2 WCBS (2) New York
- 3 SportsChannel/ El Entertainment Television
- 4 WNBC (4) New York
- 5 WNYW (5) New York (FOX)
- 6 Home Box Office
- 7 WABC (7) New York
- 8 Cable News Network (CNN)
- 9 WWOR (9) Secaucus (IND)
- 10 The Discovery Channel/ Mind Extension University
- 11 WPIX (11) New York
- 12 The Weather Channel/SportsChannel America/L.O./Cablevisionews
- 13 WNET (13) Newark (PBS)
- 14 On Cablevision (Directory)
- 15 ESPN
- 16 Arts & Entertainment
- 17 USA NEtwork
- 18 The Nashville Network
- 19 Board of Education
- 20 Turner Network Television (TNT)
- 21 WLIW-21 Plainview
- 22 Nickelodeon

- 23 Lifetime
- 24 CNBC
- 25 Archdiocese of NY/Governmental Access/Swap N/Shop
- 26 Family Channel/MSG 2
- 27 WTBS (Super Station)
- 28 VH-1
- 29 MTV
- 30 MSG/CSPAN
- 31 The Disney Channel
- 32 AMC
- 33 Bravo/Country Music
- 34 The Movie Channel
- 35 Cinemax
- 36 Showtime
- 37 Playboy Channel/ (98) Public Access
- 38 Request ! (99)
- 39/57 HSC (37)
- 40/58 WNJU-47 (96)
- 41 WXTV-47 (95)
- 42 WNYC-31 (38)
- 43 PPV Preview (39)

*Please note: for channels 37 through 43, if a subscriber has a cable ready set, they will see these services on the channels in (_).



Six Executive Plaza, Yonkers, NY 10701 Customer Service/Pay Per View: 914-378-8900 Service & Repair: 914-378-8920

In the event Madison Square Garden Network provides more than one event simultaneously, if will appear on Channel 26.

IMPORTANT SUBSCRIBER INFORMATION: The listed programs, packages and services are Ceblevision's current offerings. The programs, packages, services, number of channels, content, format, rates and other aspects of Cablevision's offerings are subject to change or discontinuance at any time in accordance with applicable law.

Additional Services:	Monthly Rate
Fee for premium service on additional outlet	, , , , , , , , , , , , , , , , , , , ,
One charge per nousehold	\$ 2.0
Equipment Non-addressable JRX-converter	\$ 0.6
Deluxe remote addressable converter featuring: volume of favorite channel selection, last channel recall and parents	
TOTAL magazine - A weekly program guide to Cablevis	sion's channel lineup \$ 2.9
A La Carte (Deluxe Remote reques HBO/Showtime/The Movie Channel/Sports Channel/The American Movie Classic/Madison Square Garden Network Bravo/The Playboy Channel	Disney Channel/
Pay Per View:	
Movie and special events	Price individually
Playboy At Night — 8pm-6am	(PER NIGHT \$ 4.5)
nstaliation Charges:	
Unwired home	(PLUS TAX) \$61.8
Prewired home	(PLUS TAX) \$46.1
Additional outlet at time of initial install	(PLUS TAX) \$30.71
Additional outlet installation separate trip	(PLUS TAX) \$46.11
Upgrade/Vcr/Pg	(PLUS TAX) \$30.79
Relocate	(PLUS TAX) \$46.19
Service call	(PLUS TAX) \$30.79

Standard underground installation:

Charges for underground installation quoted in advance. Custom installation charge will be quoted prior to commencement or work. Deposits or partial advance payments may be required and are not refundable once work has commenced. Full payment due upon completion work. As quoted

One-Time Charges:

Reconnection for non-payment	(PLUS TAX) \$46.19
Reconnection charge/trip charge (same customer, same dwelling)	(PLUS TAX) \$46.19

OTHER TERMS:

- 1. All charges may be subject to sales tax.
- 2. Initial service and programming charges are billed from date of installation to the end of the current billing period.
- 3. All installation services, other then the installation of antenna A/B switches, must be performed by Cablewision with Cablevision equipment. A/B switches purchased from sources other than Cablevision, and ell installations of A/B switches, must meet Cablevision's technical standards.
- 4. Channel selectors/converters, wireless hand-held remote controls and certain other equipment are the
- property of Cablevision and must be returned when service is changed or disconnected. In the event a service is changed or bacchinected. In the event of channel selector/converter is lost, stolen, demaged, destroyed or not returned, Cablevision will charge your account up to \$200 for each converter and up to \$50 for each wireless hand-held remote control.
- 5. An adult (18 years or older) member of household must be present during installation and service appointments.
- 6. Cablevision reserves the right to institute different rates and/or terms and conditions of service for promotional purposes.

Residential rates effective for Yonkers residential subscribers: January 1993.